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20 **UNITED STATES DISTRICT COURT**

21 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

22 24 HOUR FITNESS USA, INC.,

23 Plaintiff,

24 v.

25 NATIONAL UNION FIRE
INSURANCE CO. OF PITTSBURGH,
PA,

26 Defendant.
27

Case No. 11-CV-08088-GHK-RZ

Magistrate Judge Ralph Zarefsky

**[PROPOSED] ORDER GRANTING
STIPULATION (SECOND
AMENDED) FOR PROTECTIVE
ORDER**

ORDER

The parties' second amended stipulation for a protective order (Document No. 55) is before the Court. The Court having read the order and good cause appearing therefore, the Court hereby enters the following Stipulated Protective Order:

1. **Statement of Good Cause:** This lawsuit arises out of claims asserted by plaintiff 24 Hour Fitness pursuant to an insurance policy issued by defendant National Union. 24 Hour Fitness seeks reimbursement from National Union for sums that 24 Hour Fitness has allegedly incurred in defending against two underlying class-action lawsuits, referred to as the "*Friedman*" and "*Alatorre*" suits.

a. In the course of litigating and taking discovery in this action, the parties anticipate that they may need to produce the following categories of sensitive, confidential, and/or proprietary documents and information, collectively referred to as "CONFIDENTIAL" material:

- i. detailed invoices, bills, and statements issued by attorneys and consultants engaged by 24 Hour Fitness to defend it in the *Friedman* and *Alatorre* suits, as well as 24 Hour Fitness's internal accounting records, which contain detailed information as to the specific fees and expenses allegedly incurred in defending those suits, but by listing these categories of documents 24 Hour Fitness does not waive the right to object to the production of such documents;
- ii. documents relating to reinsurance, reserves, premiums, and claims other than the claims alleged in the *Friedman* and *Alatorre* suits, among other documents, but by listing these categories of documents, National Union does not waive the right to object to production of such documents.

1 b. In the course of litigating the damages claimed by 24 Hour Fitness,
2 the parties anticipate that National Union may challenge the
3 reasonableness of the fees and expenses allegedly incurred by 24
4 Hour Fitness in defense of the *Friedman* and *Alatorre* suits and/or
5 contend that certain or all of the fees or expenses claimed should be
6 allocated to matters outside the scope of the policy coverage. In
7 order to address those issues, the parties may need to refer to the
8 following categories of documents and information, for which 24
9 Hour Fitness asserts the attorney-client, work-product, and/or other
10 applicable privilege vis-à-vis the underlying *Friedman* and/or
11 *Alatorre* suits (and which, despite the conclusion of those suits, 24
12 Hour Fitness asserts, retain their privileged character, especially as
13 the strategies, investigations, analyses, research, and evaluations of
14 counsel reflected in those documents may bear on subjects of a
15 recurring nature pertinent to other lawsuits and matters in which 24
16 Hour Fitness may be engaged in the future), collectively referred to
17 as “PRIVILEGED” material:

- 18 i. documents reflecting the strategies, goals, or action plans of
19 24 Hour Fitness and its attorneys in defending and handling
20 the underlying *Friedman* and/or *Alatorre* suits;
21 ii. documents reflecting the bases, reasons, or criteria applied by
22 24 Hour Fitness in deciding whether to settle the *Friedman*
23 and/or *Alatorre* suits, and/or any settlement strategies or
24 tactics;
25 iii. evaluations, analyses, investigations, assessments, and/or
26 legal or factual research prepared by 24 Hour Fitness’s
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1 outside counsel, consultants, or internal lawyers pertaining to
2 the issues involved in the *Friedman* and/or *Alatorre* suits;

3 iv. detailed descriptions of services rendered by 24 Hour
4 Fitness's attorneys and consultants, as reflected in invoices,
5 bills, or statements submitted to 24 Hour Fitness, or as
6 recorded in those attorneys' or consultants' internal records;
7 and

8 v. deposition testimony or discovery responses addressing any
9 of the foregoing topics.

10 2. In designating documents or information as CONFIDENTIAL and/or
11 PRIVILEGED, the designating party shall take care to designate for protection only
12 those portions of the material, documents, items, or oral or written communication
13 that qualify for such protection, such that other portions of the same material,
14 documents, items, or oral or written communication that do not qualify for such
15 designations must not be swept unjustifiably within the scope of this Order.

16 3. Where the designation applies to documents or other information
17 contained in a tangible medium, the word "CONFIDENTIAL" or "PRIVILEGED,"
18 as applicable, shall be applied directly on the document or other tangible medium by
19 means of a stamp or other marking. Where the designation applies to information or
20 material that is not susceptible to direct marking, the designation shall be made in
21 the form of correspondence or email delivered simultaneously with furnishing the
22 information or material.

23 4. If timely corrected, an inadvertent failure to designate qualifying
24 documents or information as "CONFIDENTIAL" or "PRIVILEGED" does not,
25 standing alone, waive the designating party's right to secure protection under this
26 Stipulated Protective Order for such material. If material is subsequently designated
27 as "CONFIDENTIAL" OR "PRIVILEGED" after the material was initially
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1 produced, the receiving party must, on timely notification of the designation, make
 2 reasonable efforts to assure that the material is treated in accordance with the
 3 provisions of this Order.

4 5. Any document or information designated as “CONFIDENTIAL” or
 5 “PRIVILEGED” (as well as the information contained therein) shall be used by the
 6 receiving party solely for the purpose of this litigation and for no other purpose.
 7 CONFIDENTIAL and/or PRIVILEGED material shall not be disclosed directly or
 8 indirectly by the receiving party or its counsel *except* that, as is reasonably necessary
 9 to participate in this litigation, it may be disclosed to:

- 10 a. the parties of record;
- 11 b. their attorneys and their employees;
- 12 c. during depositions, to witnesses who have a need to review the
- 13 material in connection with their examination;
- 14 d. third-party experts or consultants (including their assistants)
- 15 retained by the parties or their counsel for the purposes of this
- 16 litigation; and
- 17 e. National Union’s reinsurer(s), auditors and Chartis and its affiliates.

18 No person entitled to receive CONFIDENTIAL or PRIVILEGED documents or
 19 information subject to this Stipulated Protective Order shall give or convey such
 20 documents or information to any person not so entitled except as provided pursuant
 21 to this Stipulated Protective Order.

22 6. The protections provided under this Stipulated Protective Order apply,
 23 not just to the documents or information in the form furnished by the designating
 24 party, but to any information copied or extracted therefrom, as well as to all copies,
 25 excerpts, summaries, or compilations thereof, plus testimony, conversations, or
 26 presentations by parties or counsel to or in court or in other settings that may reveal
 27 the CONFIDENTIAL or PRIVILEGED material.

1 7. Pursuant to Rule 502(d) of the Federal Rules of Evidence, the
 2 production or disclosure by 24 Hour Fitness in this action of documents or
 3 information that are designated “PRIVILEGED” pursuant to the terms of paragraph
 4 1(b) of this Stipulated Protective Order shall not constitute a waiver of any or all
 5 applicable privileges with respect to any other federal or state proceedings.

6 8. Any individual who may have access to any documents marked
 7 “CONFIDENTIAL” or “PRIVILEGED” under this Stipulated Protective Order shall
 8 read and understand the terms of this stipulation and order prior to obtaining access
 9 to, receiving, or reviewing any such document or information contained therein.

10 9. The following procedures shall be followed with respect to any Court
 11 Filings in this action reflecting CONFIDENTIAL or PRIVILEGED material:

- 12 a. Any pleadings, motions, memoranda, exhibits or other documents
 13 consisting of or reflecting the substance of material designated
 14 CONFIDENTIAL or PRIVILEGED (collectively “Court Filings”)
 15 shall not be filed with the Court unless the filing party first complies
 16 with the procedures set forth in Local Rule 79-5.1 for the filing of
 17 documents under seal.
- 18 b. Where the proposed Court Filings contain material that has been
 19 designated as CONFIDENTIAL or PRIVILEGED by the non-filing
 20 party, the party who intends to file such papers shall give advance
 21 notice of five business days before filing a motion, and two business
 22 days before filing a response or reply to the designating prior to
 23 submitting the application pursuant to LR 79-5.1 so that the
 24 designating party has the opportunity to file a memorandum in
 25 support of filing such material under seal.

26 10. This Stipulated Protective Order shall not preclude counsel for any
 27 party from using in the course of depositions any document or information which
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1 has been designated as “CONFIDENTIAL” or “PRIVILEGED” under the terms
2 hereof, provided that only those parties identified in paragraph 6 and the
3 stenographic reporter are present, and all copies of the portions of deposition
4 transcripts that relate to the “CONFIDENTIAL” or “PRIVILEGED” document or
5 information and exhibits thereto that are filed with the Court are marked, as
6 applicable: “Confidential/Privileged pursuant to Order of [date of order], to be
7 opened only by Order of Court.” All other copies of such transcript portions and
8 exhibits shall be marked and treated as “CONFIDENTIAL” and/or “PRIVILEGED”
9 pursuant to the terms of this Stipulated Protective Order.

10 11. The provisions of this Stipulated Protective Order shall not govern
11 dispositive motions or trial. If a party desires protection of material designated
12 CONFIDENTIAL or PRIVILEGED in connection with such proceedings, the party
13 shall make separate application at that time to the judicial officer who will preside
14 over such proceedings, justifying the protection under the standards applicable to
15 such proceedings.

16 12. At the conclusion of this action, whether by judgment or settlement
17 (including any appeals from this Court’s orders or judgments), at the option of the
18 receiving party, the CONFIDENTIAL and PRIVILEGED documents produced
19 under the provisions of this Stipulated Protective Order (and all copies or extracts
20 thereof) shall either (a) continue to be maintained in confidence by the receiving
21 party, or (b) be destroyed by the receiving party. *Provided* however that, if a
22 receiving party opts to destroy such CONFIDENTIAL or PRIVILEGED documents,
23 it shall not be required to specifically undertake to destroy electronically archived
24 copies of such material made for backup purposes (whether such documents are in
25 original form or not). Rather, it shall suffice that such archived backup copies are
26 destroyed upon the normal expiration of backup files (and maintained in confidence
27 in the interim).

1 13. By entering into this Stipulated Protective Order, no party shall be
 2 deemed to have waived any objection to the production of any document or
 3 information, including any right it may have to object to any discovery on the
 4 grounds of privacy, confidentiality or privilege or to withhold information or
 5 documents from discovery on such grounds.

6 14. Disputes regarding the treatment of any documents or information
 7 designated as CONFIDENTIAL and/or PRIVILEGED under this Protective Order,
 8 including the designation, disclosure or use of confidential material prior to trial,
 9 shall be resolved pursuant to the procedures set out in Local Rules 37-1 through 37-
 10 4 for disputes relating to discovery matters.

11 a. On any motion brought pursuant to this paragraph, the burden of
 12 persuasion shall be upon the party making the designation of
 13 confidentiality or privilege.

14 b. During the pendency of any dispute and/or motion challenging
 15 the designation of any material as confidential or privileged, the
 16 material shall continue to be treated as subject to the protections
 17 of this Stipulated Protective Order unless and until the Court
 18 determines and orders that the materials are not confidential or
 19 privileged.

20 15. In the event that any party or counsel receiving CONFIDENTIAL or
 21 PRIVILEGED material covered by this Protective Order (a) is subpoenaed in
 22 another action, (b) is served with a demand or request in another action, or (c) is
 23 served with any other legal process by one not a party to this litigation seeking
 24 CONFIDENTIAL or PRIVILEGED material that has been produced or designated as
 25 such by some other party, the party receiving such subpoena, demand, or other legal
 26 process shall:

1 a. give written notice by fax and/or email of such within five business
2 days of service to the party that produced or designated the
3 CONFIDENTIAL or PRIVILEGED material, and

4 b. object to the production and decline to produce the
5 CONFIDENTIAL or PRIVILEGED material by setting forth the
6 existence of this Stipulated Protective Order.

7 Nothing herein, however, shall be construed as requiring the party that received such
8 CONFIDENTIAL or PRIVILEGED material to challenge or appeal any order
9 requiring that it produce the material, or to subject itself to any penalties for
10 noncompliance with any legal process or order, or to seek relief from this Court.

11 16. Nothing contained in this Stipulated Protective Order shall be construed
12 as preventing any party from applying to the Court, on an appropriate showing, for
13 relief from any provision of this Stipulated Protective Order, or for further or
14 different protections for any documents or material furnished in this lawsuit.

15 17. This Stipulated Protective Order shall survive the conclusion of this
16 action and shall continue in full force and effect, and the Court shall retain
17 jurisdiction to enforce this Stipulated Protective Order.

18
19 IT IS SO ORDERED.

20 DATED: April 2, 2012

21 By: _____

22 Honorable Ralph Zarefsky

